

R-07-0012

Petitioner:

Vice Chief Justice Rebecca White Berch, Chair

Probate Rules Committee

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**Report on Changes to Proposed
Arizona Rules of Probate Procedure
Probate Rules Committee
July, 2008**

The proposed probate rules were available for public comment through May 20, 2008. Many comments were received, and this report sets forth the Probate Rules Committee's response to them.

The Probate Rules Committee met June 11, 2008, and reviewed all comments submitted to the Supreme Court's Rules Forum website and considered other comments received by Committee Members from various sources including audiences at probate seminars. The Committee agreed with most of the proposed comments and has revised the proposed rules accordingly.

Where appropriate, the Committee also has revised the proposed rules to address statutory changes made during the 2008 legislative session, including the adoption of a new trust code and amendment of statutes dealing with the death of a protected person, and made some technical corrections throughout the rules. In addition, the Committee reviewed a rule petition filed by the Arizona State Bar, R07-0024, which requests amendment of the Rules of Civil Procedure relating to limited appearances.

This report provides a brief summary of the Committee's revisions to the probate rules. If a public comment was made for a particular rule, the comment is summarized under that rule number, and the Committee's response is provided. The report likewise notes if no comment was made for a particular rule. Minor, technical revisions are not described in this report.

PREAMBLE

Some overall comments to the rules asked the Committee to clarify what probate and other proceedings are covered by the rules and to add language to the Preamble restating the values underlying the Uniform Probate Code. Consistent with these comments, the Committee made some minor revisions to the preamble.

RULE 1. SCOPE OF RULES

Members of the public questioned expressed concern that the phrase *including guardianships, conservatorships, decedents' estates, trusts, and related matters* might be both limiting and confusing and, thus, requested that the phrase be stricken. The Committee discussed the need to provide examples so lay persons would understand what was meant by "probate proceedings." Thus, the Committee voted to retain the original language, 7 ayes and 2 nays, and no changes were made to Rule 1.

RULE 2. DEFINITIONS

Public comments on Rule 2 questioned the need for some of the definitions and proposed additions to existing definitions. Definitions for "application" and "petition" were added, and the Committee retained the definition for "motion." The definition of "guardian ad litem" in Rule 2(G) has been revised both to take into account statutory changes made during the 2008 legislative session and to distinguish a guardian ad litem from a court-appointed attorney. The definition of "party" in Rule 2(K) was revised to include a person who files an application. The definition of "probate case" in Rule 2(O) has been revised to include proceedings relating to the Arizona Uniform Transfers to Minors Act and the Arizona Uniform Custodial Trust Act. The comments to Rule 2 have been updated to reflect the changes in the rule.

RULE 3. APPLICABILITY OF OTHER RULES

Two public comments were made with respect to Rule 3. The first comment stated that the addition of Rule 3 was helpful, and the second comment requested Rule 3 be removed from the Rules. The Committee agrees with the first comment and has not changed Rule 3.

RULE 4. COMMENCEMENT AND DURATION OF PROBATE CASES AND PROBATE PROCEEDINGS, AND CIVIL ACTIONS, FAMILY LAW PROCEEDINGS, AND JUVENILE PROCEEDINGS FILED WITHIN OR CONSOLIDATED WITH A PROBATE CASE

Public comments regarding Rule 4 included a request to amend Rule 4(A)(1) to include cases in which a party seeks to probate a will without the appointment of a personal representative (such as when a will must be probated solely to confirm the validity of a power of

appointment). One comment also stated that, traditionally, neither estates nor trusts have been considered true legal entities.

The Committee discussed all public comments, and the Members agreed to revise portions of Rule 4. The Committee revised Rule 4(A)(1), which addresses the commencement and duration of decedents' estate cases, to include cases involving an affidavit of succession to real property or proof of authority for a domiciliary foreign personal representative. In addition, Rule 4(A)(1) has been divided into two subsections, one dealing with the commencement of a decedent's estate case and the other dealing with the duration of a decedent's estate case. The Committee similarly agreed to divide Rule 4(A)(2), which addresses the commencement and duration of guardianship or conservatorship cases, into two sections, one for guardianship and the other for conservatorship.

RULE 5. CAPTIONS ON DOCUMENTS FILED WITH THE COURT

No public comment was received with respect to Rule 5.

RULE 6. PROBATE INFORMATION FORM

Public comment received with respect to Rule 6(A) expressed concern regarding (1) the requirement that Social Security numbers, especially those of a certified fiduciary, be listed in the probate information form; (2) the requirement that the information form be verified; and (3) the applicability of the probate information form to trust matters. The public comments suggested that some of the information required in the probate information form might not always be available when a petition is filed and that requesting a Social Security number violates federal law.

The Committee agrees with the privacy concerns expressed by the public. The Committee has addressed these concerns by revising Rule 6 and Rule 7.

As a result of the regulation of certified fiduciaries, the Administrative Office of the Court already has on file the information required by Rule 6(A)(1) for certified fiduciaries. Consequently, the Committee has revised Rule 6 by adding section B, which exempts certain nominated fiduciaries, including certified fiduciaries and banks, from the requirement of Rule 6(A)(1). However, new section C requires that if the nominated fiduciary is a certified fiduciary, the fiduciary's certification number must be provided in the probate information form. The Comment to Rule 6 has been revised to clarify that if the nominated certified fiduciary is an entity, only the entity's certification number need be provided.

The Committee also agrees that use of the term "verified" in Rule 6 is unnecessary because A.R.S. § 14-1310 already provides that documents filed in probate proceedings generally are "deemed to include an oath, affirmation or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed."

Consequently, the word “verified” has been stricken from Rule 6(B), and the comment to Rule 6 has been revised to include a reference to A.R.S. § 14-1310.

The Committee likewise agreed that the probate information form is generally inapplicable to trust matters. However, the Committee did not want to cause any confusion as to the court’s ability to obtain information pertaining to trusts. Consequently, former Rule 6(B), which had authorized the court in trust cases to require the information specified in Rule 6(A)(1), has been stricken in its entirety, and the Comment to Rule 6 has been revised to clarify that nothing in Rule 6 limits the court’s authority to request information pertaining to a trust.

RULE 7. CONFIDENTIAL DOCUMENTS AND INFORMATION

Public comment expressed concern regarding the use in documents of Social Security numbers, the responsibility for redacting confidential information if an entire document is not confidential, granting any party to a case or the party’s attorney access to confidential documents and information without demonstrating good cause, and the increase of time and costs to the courts and the public. In addition, comment from the Arizona Association of Superior Court Clerks expressed dismay at having to maintain or return to a paper oriented filing system when electronic filing is just around the corner with the advent of the new case management systems. After the Committee’s June meeting, more public comment was received by an attorney practicing in Pima County and several clerks’ offices requesting additional changes to Rule 7.

At its June 11, 2008 meeting, the Committee agreed with the public concerns, particularly those dealing with protecting the privacy of Social Security numbers and Rule 7 unintentionally frustrating a move toward electronic case files. Consequently, the Committee referred these issues to a subcommittee for further consideration.

Committee Chair Vice Chief Justice Rebecca Berch, Committee Member Jay M. Polk, and Committee staff subsequently reviewed the applicable federal law relating to disclosure of Social Security numbers and considered the original public comments relating to Rule 7, as well as the comments made after the June 11, 2008 meeting. In addition, Committee staff consulted with Administrative Office of the Courts staff, including the Director of the Information Technology. As a result of the foregoing, the Committee has revised Rule 7 in several aspects. First, based on public comment, minor technical changes have been made to Rules 7(B)(2), 7(B)(3), 7(B)(4), and 7(C). Second, new Rule 7(B) has been added (and the remaining sections of Rule 7 have been renumbered accordingly); it requires the clerk of court to comply with court rules and the Arizona Code of Judicial Administration for the security of electronically filed or transmitted confidential documents and information. Third, Rule 7(G) (formerly 7(F)) has been revised so that it no longer applies to the probate information form. Last, Rule 7(H) has been added. Rule 7(H) limits the classes the persons who are entitled, as a matter of right, to view or obtain a copy of the probate information form. Specifically, parties and their legal entities may not obtain a copy of the probate information form without first obtaining a court order. The Comment to Rule 7 also has been revised to include a reference to Arizona Code of Judicial Administration § 1-506, which prohibits the electronic filing of confidential or sealed documents.

RULE 8. SERVICE OF COURT PAPERS

Public comment for Rule 8 suggested that the rule appears to limit service to persons in Arizona. The Committee reviewed the comment but does not agree with the conclusion and, therefore, has not changed Rule 8.

RULE 9. NOTICE OF HEARING

Public comment for Rule 9 suggested that the proposed notice of hearing process was a significant change from current practice in areas of Arizona and that the proposed process does not comply with statute. Other comments expressed concern regarding the requirement that the judicial officer's name be stated in the notice of hearing; the reason given for this concern is that, in some counties, the judicial officer assigned to a case changes frequently. Another member of the public commented that the rule is inconsistent because it requires a written objection to be filed before the hearing but also permits an oral objection to be made at the hearing.

The Committee concluded that, because the notice statutes allow as little as fourteen days' notice, the rules should be changed to allow a written objection to be filed three days (rather than five days) before the hearing. The Committee did not agree that Rule 9 conflicts with the notice statutes and believed the requirement to include the judicial officer's name in the notice was prudent so parties would know in which courtroom a matter was being heard. The Committee also decided to add subsection (E) to clarify that Rule 6(e) of the Arizona Rules of Civil Procedure does not apply to notices of hearings in probate proceedings and proceedings to challenge or enforce the decision of someone authorized to make health care decisions for a patient.

RULE 10. DUTIES OWED TO THE COURT

Many members of the public submitted comments with respect to Rule 10. Comments expressed concern that (a) enforcing an attorney's responsibilities under Rule 10(A)(1) would not be feasible; (b) the requirements of Rule 10(A)(1) exceeded legal requirements and would require the attorney to be the guarantor of the performance of attorney's client; (c) Rule 10(B)(2) appeared to prevent a certified legal document preparer from assisting during the pendency of proceedings; (d) Rule 10(B)(3) would not allow accountants to prepare documents, including accountings, for another person to file with the court; (e) Rule 10(C)(1)(c) conflicted with local rules regarding notice of change of address; (f) Rule 10(C)(3)(a)'s requirements were burdensome, "overkill," and not enforceable; (g) Rule 10(D)(1)'s requirements were burdensome; (h) Rule 10(D)(2) went beyond existing law and was inconsistent with statutory priorities for payment of claims; and (i) Rule 10(E) was unnecessary.

The Committee agrees with many of the comments made regarding Rule 10. Accordingly, the Committee has revised several aspects of Rule 10. Rule 10(A)(1) has been revised so that it no longer requires attorneys to be responsible for advising the court of administrative matters relating to each case. Rule 10(C)(1)(b) has been revised so it no longer

requires a certified fiduciary who is also a member of the State Bar of Arizona to include the attorney's fiduciary certification number on documents and so a certified fiduciary who is not a member of the State of Arizona is required to include the fiduciary's certification number only on documents that the fiduciary signs and files with the court. Rule 10(C)(1) has been revised to require a guardian to notify the court within three days (rather than seventy-two hours) of a change in the ward's address. Rule 10(C)(2)(b) has been revised to take into account a statutory change made during the 2008 legislative session that deals with final conservatorship accountings when a protected person dies. Rule 10(C)(3) has been revised to clarify that, before a court-appointed fiduciary may withdraw from a case, the fiduciary must comply with all statutory requirements relating to that particular case. Rule 10(D)(1) has been revised so that when an attorney who represents a fiduciary wishes to withdraw from representation, the attorney no longer must "confirm" that all the fiduciary's statutory duties have been fulfilled; instead, the attorney simply must "inform" the court and the parties whether, to the best of the attorney's knowledge, all required guardian reports, inventories, accountings, and other similar required reports have been filed. Rule 10(D)(2), which would have required withdrawing attorneys to submit fee petitions upon their withdrawal, has been stricken. Rule 10(E), which stated that parties and counsel have a duty to diligently pursue their cases, also has been stricken. Last, the comment to Rule 10 has been revised to conform to the changes and to provide additional clarification, including clarification that Rule 10(B)(3) is not intended to preclude the use of exhibits even if the exhibit was not prepared by an unrepresented party, a party's lawyer, or a certified document preparer.

RULE 11. TELEPHONIC APPEARANCES AND TESTIMONY

Public comment for Rule 11 suggested that requiring a motion for a telephone appearance to be filed 30 days prior to the hearing was unrealistic and burdensome. The Committee believes the concern was already addressed by the introductory clause of Rule 11(B), which gives the judicial officer discretion to allow a motion or telephonic appearance to be filed fewer than 30 days before the hearing. Therefore, the Committee has not changed Rule 11 in response to that comment. Another public comment questioned whether the costs of the telephonic conference should always be borne by the party who first requested the telephonic appearance. The Committee agrees with this concern and, therefore, has revised Rule 11(A) so the judicial officer will have discretion to decide which party should bear the cost of a telephonic appearance.

RULE 12. NON-APPEARANCE HEARING

Public comment suggested that Rule 12 "micromanaged" the practice of law without adding any value. Comment also suggested the rule would confuse an unrepresented person and that requiring a specific time and date for a non-appearance hearing would create confusion for the court and parties. One comment specifically requested that non-appearance hearings be handled by local rule.

After considering the public comments, the Committee decided that no changes to Rule 12 were necessary. During the original drafting and discussion of Rule 12, Members agreed to

include non-appearance hearings in the probate rules because non-appearance hearings serve the interests of economy and efficiency. This rule, like Rule 11 for telephonic appearances, was originally drafted by one of the judicial officers serving on the Committee. The Committee, understanding the unique characteristics of non-appearance hearings, took great pains to explain in the Comment to Rule 12 the appropriate role these hearings can play in the judicial process. The Committee supports the goal of unified statewide practice and therefore did not accede to the request that the matter be left to local rules.

RULE 13. ACCELERATIONS, EMERGENCIES, AND EX PARTE MOTIONS AND PETITIONS

Public comment to Rule 13 consisted of a single statement that having rules distinguish among motions, petitions, and accelerations amounts to micromanagement.

The Committee believes that the distinctions are important for case management and protection of parties' rights. For example, if a document is denominated as a "petition," the statutory notice requirements are invoked whereas if the same document is denominated as a "motion," the time frames set forth in Rule 7.1, Arizona Rules of Civil Procedure, apply. Rules 16 through 18 were drafted to help avoid confusion as to whether a particular document should be filed as an application, a petition, or a motion, thereby also helping the parties avoid incurring unnecessary fees. For this reason, the Committee has not made any changes to Rule 13.

RULE 14. CONSENTS, WAIVERS, RENUNCIATIONS, AND NOMINATIONS

Public comment for Rule 14 suggested that language be added to Rule (14)(A)(2) regarding the waiver of additional items. Other comment suggested that the acknowledgement requirement in Rule 15(A) adds barriers to efficient administration of cases. The Committee agrees with the first comment and so added language to Rule 14(A)(2). However, the Committee disagrees with the second comment and believes the acknowledgement requirement is necessary to prevent fraudulent documents from being submitted to the court.

RULE 15. PROPOSED ORDERS

Public comment to this rule, which requires that a proposed order be lodged with the judicial officer five days before the scheduled hearing, suggested that this rule would be a drastic change from current practice in Pima County. Other comment suggested this rule was unnecessary and would increase paperwork and costs.

The Committee disagrees with the public comments and so did not change Rule 15. During the drafting of the rules, Members included this rule to allow the judicial officer and other parties time to review the order before the hearing, thereby promoting judicial efficiency. In addition, Rule 15(B) allows for flexibility.

RULE 16. APPLICATIONS

No public comment was received with respect to Rule 16.

RULE 17. PETITIONS

Public comments to Rule 17 suggested that the five-day requirement to file an objection to a petition would increase the need for an appearance at the hearing and that reducing the time to three days as is currently practiced in Pima County would provide more time to resolve any disputes. The Committee agrees with the comment and has revised Rule 17 accordingly. The comment section to Rule 17 has also been revised to reflect the reduction in time.

RULE 18. MOTIONS

The public comment for Rule 18 suggested that the rule was a regulation without merit and a desk-driven distinction. For the same reasons the Committee did not revise Rule 13, it did not revise Rule 18.

RULE 19. APPOINTMENT OF ATTORNEY, MEDICAL PROFESSIONAL, AND INVESTIGATOR

Public comment for Rule 19 suggested that requiring a form of order appointing an attorney, medical professional, and investigator 30 days before the hearing was “new law” and the 30-day requirement did not take into account conflicts or emergencies. Comment also expressed concern that the disclosure of prior relationships might violate attorney-client privilege or physician-patient privilege.

The Committee agrees the 30-day time period for lodging an order may not always be feasible. Consequently the Committee has revised Rule 19(A) to reflect that the order must be submitted to the court three days after the request is made for the appointment of the attorney, medical professional, and investigator rather than 30 days before the hearing. In addition, the Committee has added language to Rule 19(A) to clarify that a separate petition or motion for these appointments is not needed when filing a petition for appointment of a guardian or conservator.

The Committee did not make any changes regarding the disclosure elements of the Rule. These disclosures do not amount to revealing confidential information, but only ask the parties to describe any prior relationship so that the court can ensure that the nominated attorney or medical professional is independent.

RULE 20. AFFIDAVIT OF PROPOSED APPOINTEE

Considerable public comment was made with respect to Rule 20(B). These comments focused on two issues. First, the comments suggested that requiring certified fiduciaries to file the affidavit of proposed appointee with the Administrative Office of the Court's Certification and Licensing Division, in addition to the superior court, would be burdensome and would add costs to the administration of cases. Second, the comments suggested the phrase *actions taken by the certified fiduciary pursuant to such power of attorney* was vague. In addition, the Fiduciary Board recommended that Rule 20(B) not be adopted.

Originally, the Committee had intended for Rule 20(B) to relieve certified fiduciaries from filing an affidavit of proposed appointee in every case and, instead, allow certified fiduciaries to fulfill the statutory duty by filing a single affidavit with the Administrative Office of the Court's Certification and Licensing Division and update it on an annual basis. At its October 24, 2007 meeting, the Arizona Judicial Council expressed concern that this procedure would not comply with the statutory requirement set forth in A.R.S. § 14-5106.

After considering the Arizona Judicial Council's concerns regarding Rule 20(B), and the public comments, the Committee unanimously agreed to strike Rule 20(B) and the second paragraph of the Comment to Rule 20 in their entirety.

RULE 21. BACKGROUND CHECK REQUIREMENT FOR NON-RELATIVE SEEKING APPOINTMENT AS GUARDIAN OF MINOR

No public comment was received with respect to Rule 21.

RULE 22. BONDS AND BOND COMPANIES

Public comment for Rule 22 suggested that Rule 22(A) simply restated the statutes and questioned the purpose of the rule. Because the Comment to Rule 22 already explains the purposes of the rule, the Committee has not made any changes to Rule 22.

RULE 23. APPOINTMENT OF TEMPORARY GUARDIAN OR TEMPORARY CONSERVATOR

No public comment was received with respect to Rule 23.

RULE 24. APPOINTMENT OF GUARDIAN WITH INPATIENT MENTAL HEALTH AUTHORITY

Public comment regarding Rule 24 was the same as the public comment regarding Rule 36 and is addressed in Rule 36.

RULE 25. ORDER TO FIDUCIARY

Public comment to Rule 25 suggested that the proposed forms contained in the appendix to the rules were not consistent with the statutes and the rules. The Committee reviewed the forms and made any appropriate change so the forms comply with existing statutes, recent legislative amendments to those statutes, and the proposed probate rules.

RULE 26. ISSUANCE OF LETTERS

No public comment was received with respect to Rule 26.

RULE 27. HOW A PROBATE PROCEEDING BECOMES CONTESTED

No public comment was received with respect to Rule 27.

RULE 28. PRETRIAL PROCEDURES

Public comment regarding Rule 28 requested that Rule 28 be amended to affirm that the court has broad discretion to limit the scope, place, and manner of discovery. Because Rule 3 specifically states that the Arizona Rules of Civil Procedure apply to probate proceedings unless inconsistent with the probate rules and because Rule 26(b), Arizona Rules of Civil Procedure, gives the court discretion to limit discovery, the Committee does not believe the requested amendment of Rule 28 is necessary.

Public comment also questioned why Rule 38.1, Arizona Rules of Civil Procedure, is excluded. Because the comment to Rule 28 specifically explains that Rule 38.1, which deals with motions to set and certificates of readiness, is inapplicable to probate proceedings, the Committee did not make any changes to Rule 28 or the Comment.

RULE 29. ARBITRATION

No public comment was received with respect to Rule 29.

RULE 30. GUARDIANSHIP/CONSERVATORSHIP-SPECIFIC PROCEDURES

Public comment suggested that Rule 30(A)(1) appears to exempt a temporary conservator from having to file an inventory and that the deadline for filing the conservator's inventory run from the date of the conservator's first appointment, whether temporary or permanent.

Based on the public comment, the Committee has revised Rule 30(A)(1) to clarify that a conservator's inventory must list all the protected person's property as of the date the

conservator was first appointment, regardless of whether the first appointment was temporary or permanent. However, the Committee disagrees that the deadline for filing the inventory should run from the date of the conservator's first appointment rather than the date of the conservator's permanent appointment. Consequently, the Committee has not made any other changes to Rule 30(A)(1).

Public comment regarding Rule 30(A)(3) expressed concern the phrase *erroneous or misleading* was not defined in the rule and could lead to unnecessary litigation and suggested that, if the phrase were kept, the rule be revised to indicate tax assessment values were not erroneous or misleading. Because the phrase *erroneous or misleading* is taken directly from A.R.S. § 14-3708, which addresses the duty of personal representative to file a supplemental inventory, the Committee has not changed Rule 30(A)(3).

Public comment also questioned whether Rule 30(A)(3)(b)'s requirement that a conservator seek reduction of a bond would result in additional administrative costs without a corresponding savings in bond premium. The Committee agrees with the public's concern and so has stricken Rule 30(A)(3)(b) and moved the text from Rule 30(A)(3)(a) to Rule 30(A)(3).

Many comments were received regarding Rule 30(B)'s requirement that a conservator file an annual conservatorship plan. The consensus of these comments was that the requirement exceeded the requirements imposed by the probate code would impose additional administrative costs for the estate, and would provide little value to the protected person. The Committee agrees with these observations and so has stricken Rule 30(B) in its entirety.

Rule 30(C)(3), which addresses a conservator's duty to file a final accounting upon the death of the protected person, has been revised to take into consideration statutory amendments made during the 2008 legislative session, including the enactment of A.R.S. § 14-5419(F), which will, in some cases, relieve a conservator from the duty to file a final accounting.

RULE 31. DECEDENTS' ESTATE-SPECIFIC PROCEDURES

No public comment was received with respect to Rule 31.

RULE 32. TRUSTS-SPECIFIC PROCEDURES

No public comment was received with respect to Rule 32.

RULE 33. COMPENSATION FOR FIDUCIARIES AND ATTORNEY'S FEES

Rule 33, particularly sections A, D, E, and G, generated considerable public comment and criticism.

Rule 33(A) lists the items to be included in a petition requesting approval of payment of attorney or fiduciary fees from a conservatorship estate, a decedent's estate, or a trust. Rule 33(A)(1) would have required the "current gross and net value of the estate" to be provided, and members of the public observed that the phrase was ambiguous and could be a source for litigation. Moreover, because most fee requests are made in connection with an accounting, information relating to the size of the estate will have already been provided to the court. Members of the public also commented that Rule 33(A)(3), which would have required a summary of the total time, hourly rate, and charge by each timekeeper, was unnecessary and not easy to produce without incurring additional costs. The Committee agrees with these observations and has stricken former Rule 33(A)(1) and former Rule 33(A)(3).

Rule 33(D) would have limited the classes of persons who were entitled to receive compensation for serving as a guardian, conservator, or personal representative. However, members of the public pointed out that the rule conflicted with A.R.S. § 14-5651(J). Consequently, former Rule 33(D) has been stricken in its entirety and the Comment to Rule 33 has been revised to reflect that A.R.S. § 14-5651(J) limits the classes of persons and entities who are entitled to receive compensation for serving as a guardian, conservator, or personal representative.

Rule 33(E) would have required a fiduciary to disclose the amount of compensation a fiduciary pays independent contractors and employees. Numerous public comments raised concerns regarding the disclosure of such private information and possible anti-trust issues. The Committee agrees with the concerns and, as a result, has stricken form Rule 33(E) in its entirety.

Rule 33(G) would have permitted the superior court "or county" to adopt a "fee schedule" to be used in assessing the reasonableness of fees paid to certified fiduciaries. Members of the public expressed concern that the fee schedules would be used to set caps for fees or, in the alternative, would be an excuse for some fiduciaries to raise their fees to match the schedule. Based on the public comments, the Committee has revised Rule 33(G) (now Rule 33(E)) by removing the reference to "or county" and changing the phrase *fee schedule* to *fee guidelines*.

RULE 34. DISTRIBUTIONS TO MINORS AND INCAPACITATED OR PROTECTED ADULTS

No public comment was received with respect to Rule 34.

RULE 35. CIVIL CONTEMPT AND SANCTIONS

No public comment was received with respect to Rule 35.

RULE 36. RENEWAL OF GUARDIAN'S INPATIENT MENTAL HEALTH AUTHORITY

Public comment for Rule 36, which deals with the renewal of a guardian's authority to consent to inpatient treatment at a level one behavioral health facility, was the same as the comment for Rule 24, which deals with the appointment of a guardian with such authority. The comment suggested Rules 24 and 36 conflict with A.R.S. § 14-5312.01(P).

A.R.S. § 14-5312.01(P) requires a guardian who has been authorized to consent to inpatient mental health care and treatment to file with the annual report of guardian an evaluation report prepared by a psychiatrist or psychologist. If the evaluation report indicates that the ward currently needs inpatient mental health care and treatment, the guardian's authority to consent to the treatment continues. If the evaluation report indicates the ward does not currently need inpatient mental health care and treatment, or if the guardian does not file an evaluation report, the authority to consent to such treatment ceases.

Rule 24 provides that if the court appoints a guardian and authorizes the guardian to consent for the ward to receive inpatient mental health care and treatment in a level one behavioral health facility, the order appointing the guardian must state that such authority terminates one year from the date the order is entered unless the court terminates the authority sooner. Rule 36 provides a mechanism for renewing the authority. Specifically, it states that a guardian who wishes to renew such authority must file with the annual report of guardian the evaluation report required by A.R.S. § 14-5312.01(P), as well as a motion requesting that the court renew the authority. Unless the ward files an objection or request for hearing pursuant to A.R.S. § 14-5312.01(P), the court is to enter an order that extends the authority for another year.

The Committee considered the public comment and concludes that Rules 24 and 36 are procedural, not substantive, in that they provide a practical mechanism for compliance with A.R.S. § 14-5312.01(P) that also protects the due process rights of the ward. Consequently, the Committee has not made any revisions to Rules 24 or 36.

RULE 37. SETTLEMENTS INVOLVING MINORS OR INCAPACITATED ADULTS

No public comment was received with respect to Rule 37.

RULE 38. APPENDIX OF FORMS

Public comment for forms indicated that practitioners appreciate that the forms are optional, and other comments indicated the need to modify some forms to comply with statutes and new legislation. Based on the public comments, the Committee revised portions of the orders to fiduciary so they are consistent with existing law, amendments made during the 2008 legislative session, and the probate rules.